

PROPOSED AMENDMENTS TO TITLE 14 CALIFORNIA CODE OF REGULATIONS

HOW TO READ THESE REGULATORY CHANGES:

The text of the affected regulations which has not been changed by this rulemaking is printed in plain text: **Plain text**. Text deleted from the original text of the affected regulations is indicated by strikeout: ~~Strikeout~~. Text added by this rulemaking is indicated by underline text: Underline.

Sections 19030, 19031 and 19032 of the California Code of Regulations, Title 14, Division 8 are proposed to be amended as follows:

19030 Definitions

For purposes of this Chapter, ~~the following definitions apply:~~ definitions in Health and Safety Code section 25570.2 shall apply unless further specified in this section:

- (a) “Continuing Education” means Office-approved courses of learning that are intended to further the professional competence of an REA II.
- ~~(e)~~(b) “Director” means the Director of the Office of Environmental Health Hazard Assessment or designee.
- ~~(a)~~(c) “Environmental Quality Assessment” or “assessment” means a systematic, documented, periodic, and objective review of the operations and practices, used by any commercial or industrial business or individual whose activities are regulated under Chapter 6.5 (commencing with section 25100) or Chapter 6.95 (commencing with section 25500) of the Health and Safety Code, to achieve, monitor, maintain, and where feasible exceed, compliance with environmental, worker health and safety, and public health requirements for the manufacture and use of hazardous substances and the generation and disposal of hazardous wastes. A complete environmental assessment includes a number of different components related to hazardous substance and hazardous waste management and requires the expertise of a variety of assessors. An environmental assessment includes technical or managerial recommendations or actions, of a general or specific nature, in one or more of the following areas:
 - (1) Recommendations or specific actions for complying with, and where feasible, exceeding legal requirements in areas related to hazardous substance and hazardous waste management, including, but not limited to, air quality, water quality,

emergency preparedness and response, hazard communications, and occupational safety and health.

- (2) A qualitative review, or where feasible, a quantitative review, of the risks resulting from occupational, public or environmental exposure to hazardous substances.
 - (3) Recommendations or actions for anticipating and minimizing the risks specified in paragraph (2), including any potential liability, associated with regulated and unregulated hazardous substances, and any suggested management procedures or practices.
- (d) “Hazardous Substance or Hazardous Waste Site Cleanup Opinion” means the opinion of an REA II of the need for further investigation or remedial work at a site. This opinion is based upon the investigatory and assessment work performed by the REA II.
 - (e) “Lead Agency” means the Department of Toxic Substances Control, the State Water Quality Control Board, Regional Water Quality Control Boards or the local, authorized administering agency.
 - (f) “Office” means the Office of Environmental Health Hazard Assessment.
 - (g) “Professional-level environmental experience” means all of an REA II’s professional experience that is determined by the Office to be experience applying scientific or engineering principles in a physical or biological science, engineering or related field. This experience includes instances where the REA II’s conclusions formed the basis for reports, studies and other similar documents.
 - (h) “Professional-level site mitigation experience” means supervisory or project management related experience obtained through managing or supervising scientific or engineering staff who are conducting multimedia investigations, assessments, and cleanup work at hazardous substance and hazardous waste sites. Such experience must be of a professional level and indicative of an REA II’s competence to conduct investigations, assessments, and remedial work and/or to render opinions regarding investigation, assessments, and remedial work at response action sites.
 - (i) “REA I Applicant” means any person applying for registration or renewal of registration as a California Registered Environmental Assessor - Class I (REA I).
 - (j) “REA II Applicant” means any person applying for registration or renewal of registration as a California Registered Environmental Assessor - Class II (REA II).
 - ~~(b)~~(k) “Registered Environmental Assessor - Class I” or assessor—Class I” (REA I)” means an individual registered by the State of California pursuant to Title 14, California Code of Regulations, sections 19030 through 19032, who, through academic training, occupational experience, and reputation, is qualified to objectively conduct one or more aspects of an

environmental assessment. REA Is may include, but shall not be limited to, specialists trained as analytical chemists, professional engineers, epidemiologists, geologists, hydrologists, attorneys with expertise in hazardous substance law, physicians, industrial hygienists, toxicologists, and environmental program managers.

(l) “Registered Environmental Assessor - Class II (REA II)” means an individual registered by the State of California pursuant to Title 14, California Code of Regulations, sections 19033 through 19044.

(m) “Registrant” means any person registered as an REA II.

(n) “Rescind” or “rescission” means to suspend or revoke an REA registration.

Authority: Health and Safety Code Section 59012, Health and Safety Code Section 25570.3

Reference: Health and Safety Code Section 25570.3

19031 REA I Qualifications and Application Procedures

The applicant for registration as an REA I ~~registered environmental assessor—Class I~~ shall:

- (a) Demonstrate a minimum of five (5) years full time experience in the REA I applicant’s general field of expertise, acquired within the last eight (8) years.
- (b) Demonstrate a minimum of two (2) years substantial experience in performing environmental assessments relating to hazardous substances and hazardous wastes acquired within the last four (4) years.
- (c) Possess a bachelor’s or higher degree from an accredited college or university in a physical or biological science, engineering or law. State certification, licensing or registration, or certification by a nationally recognized professional association in a physical or biological science, engineering or law shall be considered equivalent to such training. Five (5) years substantial experience performing environmental assessments relating to hazardous wastes or hazardous substances acquired within the last eight (8) years shall also be considered equivalent to such training.
- (d) Provide the names, addresses, telephone numbers and professional affiliations of three or more references who as employers, supervisors, co-workers at equal or higher level or clients can attest to the accuracy of the evidence provided by the applicant, to the applicant’s professional competence and character, or both.
- (e) Apply using a form provided by the Director entitled “Registered Environmental Assessor (REA I) Application Form.”
- (f) An REA I applicant also seeking REA II registration should follow the application procedures in sections 19034 through 19035.

- (g) Forward a \$50 (fifty dollar) non-refundable application fee by check, credit card, or money order made payable to the Office of Environmental Health Hazard Assessment, Registered Environmental Assessor Program, or OEHHA/REA I Program, along with the application.
- (h) Despite meeting the criteria in subsections (a) through (f), the following persons shall not be eligible for registration as an REA I:
- (1) Pursuant to section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193 (PRWORA), (8 U.S.C. § 1621), and notwithstanding any other provision of this division, aliens who are not qualified aliens, nonimmigrant aliens under the Immigration and Nationality Act (INA) (8 U.S.C. § 1101 et seq.), or aliens paroled into the United States under section 212 (d) (5) of the INA (8 U.S.C. § 1182 (d) (5) for less than one year, are not eligible for registration as a California Registered Environmental Assessor as set forth in section 25570.3 of the Health and Safety Code.

Authority: Health and Safety Code Section 59012, Health and Safety Code Section 25570.3

Reference: Health and Safety Code Section 25570.3

19032 REA I Registration, Renewal and Disqualification

- (a) The Director shall compile and update a directory of ~~registered environmental assessors—Class I REA Is~~, based on the application information, and other relevant information brought to the Director's attention.
- (b) On or before June, 1996, to become a registered environmental assessor - Class I, the applicant shall forward the sum of \$100 (one hundred dollars) by check or money order made payable to the OEHHA/REA I Program, upon notice of acceptance, and annually thereafter. On or after July 1, 1996, to become an ~~registered environmental assessor—Class I REA I~~, the applicant shall forward the sum of \$75 (seventy-five dollars) by check, credit card, or money order made payable to the OEHHA/REA I Program, upon notice of acceptance, and annually thereafter. When submitting the annual renewal fee, ~~assessors—Class I REA Is~~ may also update the application information they previously submitted.
- (c) ~~Assessors—Class I REA Is~~ shall apply for renewal of registration every five (5) years following the date of initial registration by completing a renewal application form provided by the Director and paying the fee determined by the Director.
- (d) For cause, the Director may revoke or suspend the registration of any ~~registered environmental assessor—Class I REA I~~ and delete that assessor's name from the directory.

Authority: Health and Safety Code Section 59012, Health and Safety Code Section 25570.3

Reference: Health and Safety Code Section 25570.3

**The following sections are proposed to be added to Title 14,
California Code of Regulations:**

19033 REA II Criteria for Registration

- (a) Despite meeting the criteria in subsections (b) through (f), the following persons shall not be eligible for registration as an REA II:
- (1) Pursuant to section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193 (PRWORA), (8 U.S.C. § 1621), and notwithstanding any other provision of this division, aliens who are not qualified aliens, nonimmigrant aliens under the Immigration and Nationality Act (INA) (8 U.S.C. § 1101 et seq.), or aliens paroled into the United States under section 212 (d) (5) of the INA (8 U.S.C. § 1182 (d) (5) for less than one year, are not eligible for registration as a California Registered Environmental Assessor as set forth in section 25570.3 of the Health and Safety Code.
- (b) An REA II applicant must be registered as an REA I.
- (c) Minimum Educational Requirements
- (1) REA II applicants for registration shall have graduated from an accredited college or university and possess a bachelor of science degree, in a physical or biological science, engineering or a related field.
- (2) The Office will consider a United States (U.S.) college or university to be an accredited college or university when it is accredited by Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Southern Association of Colleges and Schools, or Western Association of Schools and Colleges. A college or university which is located outside of the U.S. will be considered an accredited college or university on the basis of its accreditation status in the education system which has jurisdiction. REA II applicants with a foreign degree may be required to submit a report by a member of the National Association of Credential Evaluation Services, Inc.
- (d) Minimum Experience Requirements.
- (1) Each REA II applicant shall possess a minimum of eight (8) years of professional-level environmental experience, acquired within the last ten (10) years, of which four (4) years shall be professional-level site mitigation experience acquired in the last six (6) years. Professional-level environmental experience and professional-level site mitigation experience performed for less than an average minimum of thirty (30) hours per week will be applied toward the satisfaction of these requirements on a pro rata basis.

(e) Professional-Level Environmental Experience

- (1) Professional-level environmental experience will be determined by the REA II applicant's professional experience in positions in which the REA II applicant demonstrated sound scientific judgment and decision making, as well as professional responsibility and integrity with minimal supervision.

(f) Professional-Level Site Mitigation Experience

- (1) Professional-level site mitigation experience will be determined by the REA II applicant's professional experience in positions in which:
- (A) More than 75% of the REA II applicant's professional-level site mitigation position included assessment, containment, or removal action responsibilities;
 - (B) An REA II applicant evaluated and selected scientific or technical methodologies for conducting assessments, containments, or removals at sites;
 - (C) An REA II applicant supervised or coordinated other professionals in the conduct of scientific and technical tasks necessary to complete assessments, containments, removals, and,
 - (D) An REA II applicant drew scientifically supportable technical conclusions, made recommendations, and issued opinions based on the results of assessments, containments, or removals.
- (2) Professional-level site mitigation experience will be determined in part by at least four references, named by the REA II applicant, with professional-level site mitigation experience. At least one reference shall be from a qualified representative of a lead agency with regulatory authority over the cleanup work at a hazardous substance or hazardous waste release site at which the REA II applicant acted as project manager. None of the references shall be related to the REA II applicant by birth or marriage.
- (3) Professional-level site mitigation experience must be gained through exercising a broad range of responsibilities with assessments, containments, or removals, and may not be gained through exercising a narrow spectrum of responsibilities for parts and/or components of assessments, containments, or removals. Professional-level site mitigation experience may consist of work which includes the contributions of others in reaching decisions on waste site cleanup activities; however, REA II applicants must demonstrate to the Office that they have been an active participant and a principal decision maker, including but not limited to a team leader, project leader or principal scientist.

- (g) All eligibility requirements contained herein shall be applied without regard to the race, creed, color, gender, religion, or national origin of the individual.

Authority: *Health and Safety Code Section 59012, Health and Safety Code Sections 25570.3*
Reference: *Health and Safety Code Sections 25570.3 through 25570.4*

19034 **REA II Application for Registration**

- (a) An REA II applicant shall complete an REA II application form (approved by the Office) and file the form, together with the REA II application fee, with the Office.
- (b) Incomplete REA II applications, and applications that are not legible, not typed or printed, not completed according to the instructions, or not accompanied by the requisite fee and references, may be rejected by the Office if the REA II applicant fails to correct identified deficiencies within 30 days of notification of the deficiency. The Office may require the REA II applicant, at any time during the review period, to submit references and information related to the REA II applicant's employment history, education, experience, and any other information necessary to clarify an REA II application.
- (c) If requested, the REA II applicant shall submit copies of transcripts from the appropriate educational institution or other documentation issued by educational institutions from which the REA II applicant earned the degree to demonstrate the minimum education requirement for registration. If an REA II applicant is requested to provide official transcripts for a degree, the REA II application will not be considered complete and will not be reviewed until official transcripts of the degree have been received by the Office.
- (d) The Office will consider each REA II application and the REA II applicant's eligibility for registration. The Office will review each REA II application and supporting evidence to determine the completeness of the REA II application. Within 30 days of receipt, the Office will inform the REA II applicant, in writing, that the REA II application is complete and accepted for review, or that the REA II application is deficient and what additional information is necessary.
- (e) All fees required by provisions of Health and Safety Code section 25570.3 (e) (2) as implemented by the Office shall be transmitted by money order, bank draft, credit card, or check, payable to: "OEHHA/REA II."
- (1) The following are the fees:
 \$ 125 nonrefundable application fee
 \$ 500 annual fee

Total initial REA II application and annual fees are \$625.

Authority: Health and Safety Code Section 59012, Health and Safety Code Section 25570.3
Reference: Health and Safety Code Section 25570.3

19035 OEHHA's Review of Application

Within 60 days of the Office's determination that an REA II's application is complete under section 19034, the Office will determine if the REA II applicant meets the minimum criteria in section 19033 and is eligible for registration.

- (a) The Office will review the application for registration of an REA II for current REA I registration. If the applicant for REA II is not registered as an REA I, he or she must meet the criteria in section 19031. If the REA II applicant meets the criteria in section 19031, the Office will register the applicant as an REA I.

- (b) The Office will review REA II applications meeting the requirements of section 19034, to determine if the applicant's experience and education qualify the applicant to perform the tasks required of an REA II. In order to make this determination, the Office will consider all relevant information pertaining to the REA II applicant's education and experience as required by Health and Safety Code section 25570.3(c), including, but not limited to, information concerning:
 - (1) The knowledge, skill, and expertise of the REA II applicant;
 - (2) The duration of the REA II applicant's relevant employment;
 - (3) The previous performance of the REA II applicant with regard to various investigative methods used, including but not limited to, whether such experience includes work at sites where subsurface investigations have occurred;
 - (4) The previous performance of the REA II applicant with regard to the various types of remedial systems designed and monitored;
 - (5) The performance of the REA II applicant with regard to risk and exposure assessments;
 - (6) The number of individuals and disciplines of other professionals supervised or coordinated by the REA II applicant;
 - (7) The scientific defensibility of conclusions reached and recommendations and opinions presented by the REA II applicant; and
 - (8) The degree to which the REA II applicant relied upon other environmental consultants and the degree to which the REA II applicant's decision-making responsibilities were differentiated from others.

- (c) Within 120 days of determining that an REA II application is complete under section 19034, the Office will notify the REA II applicant, in writing, if registration is approved or denied.
- (d) The determinations in sections 19033 and 19035 are made by reviewing evidence, including but not limited to references, reports prepared by the REA II applicant, time sheets, affidavits, comments, the REA II application form, and other sources the Director deems appropriate.

Authority: Health and Safety Code Section 59012, Health and Safety Code Section 25570.3

Reference: Health and Safety Code Section 25570.3

19036 REA II Denial of Registration

- (a) The Office shall deny the registration of an REA II applicant for failure to meet the minimum criteria in section 19033.
- (b) Grounds for denial of an REA II applicant for registration as an REA II include, but are not limited to:
 - (1) The grounds stated in Division 1.5 (commencing with section 475 through 478 and 480 through 489) of the Business and Professions Code, or
 - (2) Any of the findings listed in Health and Safety Code section 25570.3 (l), (1) through (8).
- (c) When considering the denial of an REA II application under Subsection (b), the Office, in evaluating the rehabilitation of the REA II applicant and the REA II applicant's present eligibility for registration, will consider the following criteria:
 - (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial, and
 - (2) Total criminal record.
 - (3) Evidence of any crime(s) under consideration as grounds for denial or rescission which also could be considered as grounds for denial under section 480 of the Business and Professions Code.
 - (4) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsection (a) and (b).
 - (5) The extent to which the REA II applicant has complied with any terms of parole, probation or restitution, or any other sanctions lawfully imposed against the REA II applicant.

- (6) Evidence, if any, of rehabilitation submitted by the REA II applicant.
- (d) The Director has final authority with respect to the denial of the registration of an REA II applicant.
- (e) For the purpose of denial of the registration of an REA II, pursuant to Division 1.5 (commencing with section 475 of the Business and Professions Code, a crime shall be considered substantially related to the qualifications, functions and duties of an REA II if to a substantial degree it evidences present or potential unfitness of an REA II to perform the functions authorized by their registration in a manner consistent with the protection of public health, safety, welfare or the environment. Such crimes shall include, but not be limited to the following:
 - (1) Any violation of the provisions of Chapter 12.5 of Division 3 of the Business and Professions Code.
 - (2) Conviction of a crime, involving an act of moral turpitude including, but not limited to, fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering and money laundering.
- (f) An REA II applicant who is denied registration as an REA II may appeal to the Office for re-evaluation of their REA II application pursuant to section 19039. An appeal shall be filed within sixty (60) days after the date the denial notice is postmarked.

Authority: Health and Safety Code Section 59012, Health and Safety Code Section 25570.3; Business and Professions Code Sections 475, 480, and 490

Reference: Health and Safety Code Sections 25570.3 through 25570.4; Business and Professions Code Sections 475, 480, 482, and 490

19037 REA II Renewal of Registration

- (a) Registration shall be renewed within five (5) years of the anniversary date of the initial registration or renewed registration.
- (b) The Office may deny a renewal for any of the following:
 - (1) The Registrant fails to meet one or more of the criteria for registration in section 19033;
 - (2) The Registrant fails to meet the Continuing Education requirements in subsection (c);
 - (3) The Director determines, pursuant to Health and Safety Code section 25570.3 (i), that factual complaints regarding the work of the REA II warrant denying renewal;

or

(4) Any of the grounds listed in section 19036.

(c) Continuing Education.

(1) As part of the REA II application for renewal of an REA II registration, each REA II applicant shall demonstrate to the Office's satisfaction that the REA II applicant has earned a minimum of thirty (30) units of continuing education credit during the preceding five (5) years. Continuing education credits are considered to be earned at the successful completion of each course. A maximum of four (4) continuing education credits may be carried over to the following registration period.

(2) Continuing education credit may be earned as follows:

(A) Successful completion of relevant college courses; or

(B) Teaching or instructing at any courses or other meetings pertaining to the investigation and/or remediation of hazardous substances and hazardous wastes.

(C) Attendance at relevant seminars, symposiums, workshops or technical presentation made at meetings, conventions or conferences pertaining to the investigation and/or remediation of hazardous substances and hazardous wastes.

(3) The documents used by an REA II applicant to support continuing education units shall be submitted with the renewal REA II application. These documents include:

(A) A log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name(s) and the continuing education units earned.

(B) Attendance verification documents, including but not limited to, completion certificates from the sponsoring entity or other documents supporting evidence of attendance and the actual hours of instruction.

(4) Converting units of credit:

(A) Two (2) hours of classroom time equals one (1) unit of continuing education.

(B) Two (2) hours of attendance at seminars, workshops, or professional or technical presentations made at meetings, conventions, or conferences equals one (1) unit of continuing education.

- (5) Because health and safety training is normally required to perform the work of an REA II, limited credit will be given for health and safety training courses. A forty (40) hour health and safety course will qualify for five (5) units of continuing education credit (Forty (40) hours of classroom time equals twenty (20) units of credit; 25% of 20 units = 5 units of credit.) A eight (8) hour refresher course will qualify for one (1) unit of continuing education credit.
- (6) All continuing education documents and supporting information shall be accompanied by an affidavit, or equivalent, from the REA II applicant that swears and affirms that all information is truthful, accurate and complete.
- (7) An REA II may be excused from the continuing education requirements under the following circumstances:
 - (A) Health reasons, as certified by a medical doctor; or,
 - (B) A civilian called to active military service in the U.S. Armed Forces.
- (8) The Office has final authority with respect to approval of courses, credit, continuing education unit value for courses and other methods of earning credit.
- (9) All continuing education units shall be earned in courses that enhance or further maintain the REA II's ability to render competent professional services. The course must be taught by competent instructors knowledgeable in the subject matter to be presented.
- (10) The Office may, from time to time, require all REA IIs to take a specific course. The Office will count that course toward continuing education requirements.

Authority: Health and Safety Code Section 59012, Health and Safety Code Section 25570.3
Reference: Health and Safety Code Section 25570.3 through 25570.4

19038 REA II Rescission of Registration

- (a) The Director shall rescind the registration of an REA II for any of the following:
 - (1) The grounds stated in Division 1.5 (commencing with sections 490 through 495) of the Business and Professions Code,
 - (2) Failure to meet the minimum performance standards adopted pursuant to Health and Safety Code section 25395.15.
- (b) The Director may temporarily or permanently rescind the registration of an REA II, or take other disciplinary action, for any of the following:

- (1) Any of the grounds for denial of registration listed in section 19036.
- (2) The REA II is an employee of a project proponent, a known responsible party, or a prospective buyer of a site property.
- (3) The REA II is a general partner, or limited partner, with any project proponent, known responsible party, or prospective buyer of a site.
- (4) The REA II receives any source of income from the project proponent, known responsible party, or a prospective buyer of the site property, other than the payment of fees for professional service.
- (5) The REA II is a shareholder in the project proponent entity, known responsible party, or a prospective buyer of a site.
- (6) The REA II accepts, or agrees to accept, any payment that is in any way contingent upon the completion of a response action.
- (7) The REA II accepts or agrees to accept any payment that is in any way contingent upon a specified finding, opinion or result of the services rendered.
- (8) The REA II's failure to comply with Health and Safety Code sections 25570.3 through 25570.4, and 25395.1 through 25395.15; regulations adopted pursuant to Health and Safety Code section 25359.15, and Title 14, CCR sections 19030 through 19044.

Authority: Health and Safety Code Section 59012, Health and Safety Code Section 25570.3
reference: Health and Safety Code Section 25570.3

19039 REA II Appeal Procedures

- (a) The following procedures shall govern the appeal of decisions made under sections 19036, 19037, and 19038.
 - (1) An appeal shall be filed within sixty (60) days after the date of the rescission or denial notice.
 - (2) An appeal shall be made in writing and shall state the reason therefor. An appeal shall be supported by additional evidence, more references, affidavits, and supplemental information.
 - (3) The Director may deny an appeal which is not filed within the time period provided in subsection (1).
 - (4) The Director shall notify, in writing and within 120 days of receipt of the appeal,

each REA II applicant or registrant who appeals under this section of the approval of the appeal or the reason for denial.

- (5) When an appeal under this section is denied, the Director shall notify the REA II applicant or registrant of his or her right to a hearing under the Administrative Procedure Act (Government Code sections 11500 through 11530). A hearing shall be scheduled if the REA II applicant or registrant makes a written request for a hearing within 60 days after service of the notice of denial.

Authority: Health and Safety Code Section 59012, Health and Safety Code Section 25570.3, Business and Professions Code Sections 475, 480, and 490

Reference: Health and Safety Code Sections 25570.3 through 25570.4; Business and Professions Code Sections 475, 480, 482, and 490

19040 **REA II Audits**

- (a) These audit criteria are to ensure a desired standard of performance beyond the minimum standard of performance required in regulations adopted pursuant to Health and Safety Code section 25359.15. Audit deficiencies not severe enough to fall below the minimum standard of performance will be reported to the REA II and the lead agency.
- (b) The Office may perform periodic audits of work performed and certified by an REA II in order to 1) review the qualifications of registered professionals, 2) verify the quality of work, including the exercise of reasonable care and diligence, and 3) ensure the desired standard of performance and professional responsibility.
- (c) Upon request or referral by the Department of Toxic Substances Control (DTSC), by any lead agency or by any person, the Office will investigate complaints regarding the REA II's failure to meet applicable performance standards. The Office may conduct or arrange for the conduct of a preliminary investigation to determine the truth and validity of the allegations set forth in a complaint.
- (d) To facilitate disposition of a complaint, (at any time prior to the commencement of an adjudicatory proceeding), the Office may request the person filing the complaint, the REA II who is the subject of the complaint, and any other person to attend an informal conference to discuss the complaint, and any associated technical data, report, records, environmental samples, photographs, maps and files.
- (e) An REA II shall provide the Director's authorized representative with complete access at any reasonable hour of the day to all requested information including, but not limited to, technical data, reports, records, environmental samples, photographs, maps, and files used in the preparation of certified reports, contracts, invoices, payment schedules and accounting records, with the exception of proprietary or other confidential information related to implementation and compliance with the requirements of the REA II Program.

Authority: Health and Safety Code Section 59012, Health and Safety Code Section 25570.3
Reference: Health and Safety Code Sections 25570.3 through 25570.4

19041 **REA II Reasonable Care and Diligence**

- (a) For the purposes of auditing to verify the quality of work, including the exercise of reasonable care and diligence in the performance of work, an REA II shall:
- (1) Act with reasonable care and diligence. Reasonable care and diligence means compliance with all applicable laws and regulations and includes, but is not limited to, the following:
- (A) In conducting a Preliminary Endangerment Assessment, the REA II will establish and document whether current or past hazardous substance or hazardous waste management practices resulted in the release or threatened release of hazardous substances and hazardous wastes and whether that release or threatened release poses a threat to public health or the environment.
- (B) In conducting the Preliminary Endangerment Assessment, the REA II shall include a community survey of residents, businesses, local officials and property owners surrounding the site to determine if there is significant community interest or controversy concerning the site.
- (C) In conducting a Remedial Investigation/Feasibility Study, the REA II will efficiently and effectively characterize the nature and extent of risks posed by hazardous substances and hazardous wastes and evaluate remedial options. Characterization of the nature and extent of risks will include:
- i. Gathering information sufficient to support an informed risk management decision regarding which remedy appears to be most appropriate for a given site; and,
- ii. Data gathering must be adequate to characterize site conditions, determine the nature and extent of wastes, determine whether there has been a groundwater discharge or a threat to surface or groundwater, assess exposure pathways and risks to public health and the environment, conduct treatability studies as necessary and evaluate potential performance and evaluate the cost of treatment and/or remedial work.
- iii. The risk characterization and assessment shall be performed in a manner consistent with scientifically acceptable risk assessment practices, and shall take into consideration guidance published by the Office.

- (D) In conducting a Remedial Design/Remedial Action, the REA II must detail the steps to be taken during the remedial action to meet the remedial objectives outlined in the Remedial Action Plan, Corrective Action Plan or equivalent. If remedial work results in ongoing operations and maintenance (O&M), the REA II must prepare an O&M plan which includes the O&M schedule, cost estimate, and provides for periodic value engineering and review.
- (b) An REA II shall not submit a report or render a hazardous substance or hazardous waste site cleanup opinion in a report which does not include the signature and registration number of the REA II. If other registered professionals perform engineering, geologic or other professional services which are included in, or form the basis of the report or opinion, the signature and registration number of each must be included in the report or opinion. All engineering or geologic work must be performed by a registered professional in compliance with the requirements of the Professional Engineers Act, Business and Professions Code sections 6700 – 6799 and the Geologist and Geophysicist Act, Business and Professions Code sections 7800 – 7887.

Authority: Health and Safety Code Section 59012, Health and Safety Code Section 25570.3

Reference: Health and Safety Code Sections 25570.3 through 25570.4

19042 REA II Professional Responsibility

- a) For the purposes of auditing to ensure the desired standard of performance and professional responsibility in the performance of work, an REA II shall:
- (1) Hold paramount the public health, safety and welfare, comply with all applicable laws and regulations and shall:
- (A) Apply the knowledge and skill referenced in sections 19033 and 19035, and required of an REA II practicing in California. The work of the REA II shall be performed pursuant to a specific plan and consistent with appropriate guidance and standards of practice;
- (B) Act in a manner that protects the health and safety of the public, the health and safety of remediation workers, and the environment;
- (2) Exercise independent professional judgment and objectivity in any professional statement, testimony or report, including, but not limited to, reports required by the Office, Health and Safety Code sections 25395.1 and 25570.3, sections 19030 through 19044 and regulations adopted pursuant to Health and Safety Code section 25395.15;
- (3) Make a good faith and reasonable effort to identify and obtain relevant material,

data, reports and other information, regarding conditions at the site upon which an REA II will render a cleanup opinion. The Remedial Action Plan, Removal Action Workplan or Corrective Action Plan prepared by the REA II shall describe the efforts of the REA II to obtain relevant material, data, reports, and other information;

- (4) Evaluate and select sound scientific or technical methodologies for conducting investigations, assessments, and remedial work at hazardous substance and hazardous waste sites;
- (5) Develop sound technical conclusions, well-founded and documented recommendations and competent opinions based upon the results of multi-media investigations and assessments; and,
- (6) Have an understanding of relevant and applicable laws, regulations and guidance related to the investigation, assessment and remediation of hazardous substances and hazardous wastes.
- (7) Render a hazardous substance or hazardous waste site cleanup opinion only when the REA II possesses the necessary education, training, and experience to render such an opinion, and the REA II has:

 - (A) Managed, supervised or actually performed the work which is required to render a hazardous substance or hazardous waste site cleanup opinion; and,
 - (B) Relied on personal, professional experience, expertise, education or training; or,
 - (C) Relied, in part, upon the advice of one or more professionals whom the REA II determines are qualified and possess the necessary education, training, expertise and experience in other areas, outside the registered professional's area of professional practice.
- (8) In rendering a hazardous substance or hazardous waste site cleanup opinion, the REA II shall disclose and explain the relevant facts, data, and other information which support the opinion. The opinion shall include all qualifications and limitations of the opinion, and shall include an explanation of how objectivity was maintained by the REA II.
- (b.) If an REA II, identifies an imminent hazard or a condition of imminent or substantial endangerment at a property at which the REA II is providing professional services, the REA II shall:

 - (1) Immediately notify the project proponent, and when necessary, an agency with authority to respond to an emergency, of the imminent hazard or the imminent and substantial endangerment, and of the need to notify the lead agency.

- (2) As soon as possible, but within 24 hours, the REA II shall notify the lead agency if the project proponent fails to do so.
- (3) Make all statutorily required emergency notifications of a hazardous material release.
- (4) Within 10 calendar days, an REA II shall notify the project proponent and lead agency of learning of material facts, data or other information, which existed at the time a previous opinion was rendered by the assessor or a predecessor assessor, that:
 - (A) Supports a hazardous waste site cleanup opinion contrary to his or her previously rendered opinion, or;
 - (B) Supports a hazardous waste site cleanup opinion contrary to a previous opinion by a predecessor REA II.
- (c) Any lead agency, participating agencies or other California Registered Environmental Assessors, providing oversight of the work of an REA II, should report to the Office, substandard work which does not meet the performance standards established in these regulations.
- (d) Upon the completion of a response or remedial action, the REA II shall complete any program performance questionnaire required by the Office to assess, evaluate and audit the performance of the REA II Program, including site details, project results, and providing recommendations for improvements in the program standards and processes.
- (e) If the Director determines that an REA II's performance fails to meet the minimum standards of performance adopted pursuant to Health and Safety Code section 25395.15, the registration of the REA II will be rescinded in accordance with section 19038.
- (f) If, as the result of an audit, the Office finds that the work of an REA II is not in compliance with the provisions of this section, the registration of the REA II may be rescinded.

Authority: Health and Safety Code Section 59012, Health and Safety Code Section 25570.3
Reference: Health and Safety Code Sections 25570.3 through 25570.4

19043 State Licensing Match System

- (a) The Office shall take action regarding the registration of any registered environmental assessor when appropriate pursuant to the Welfare and Institutions Code, section 11350.6. Such action may include, but is not limited to, the issuance of a temporary registration, rescission of a registration, denial of an REA application for renewal, or any other action

authorized or required pursuant to section 11350.6 of the Welfare and Institutions Code.

Authority: Health and Safety Code Section 59012, Welfare and Institutions Code Section 11350.6

Reference: Welfare and Institutions Code Section 11350.6

INITIAL STATEMENT OF REASONS

REGISTERED ENVIRONMENTAL ASSESSOR II (REA II)

SUMMARY OF RULEMAKING

This rulemaking amends sections 19030, 19031, and 19032 of the California Code of Regulations (CCR) and enacts sections 19033 through 19044. The proposed amendments distinguish between the existing Class I Registered Environmental Assessor (REA I) program and the new Class II Registered Environmental Assessor (REA II). CCR sections 19033 through 19044 are added to define the application process, criteria and qualifications for registration as an REA II, how the work of an REA II will be audited, and the grounds for denial or rescission of registration.

The proposed regulations are based on the requirements of Assembly Bill 1876, commencing with Health and Safety Code (H&SC) section 25570.3, which authorized the REA II program. The proposed regulations provide a procedure for registration and clarify how the REA II program will be administered. The proposed regulations include: 1) general provisions, including definitions regarding interpretation and application of the regulations; 2) criteria and procedures for application, registration and renewal of registration as a REA II; 3) grounds for denial, rescission or appeal of denial or rescission of an application or registration; 4) disciplinary standards; and, 5) for auditing purposes, make clear the performance standards and professional responsibilities of the REA II.

These regulations set forth procedural steps which benefit both the REA applicant, the Office of Environmental Health Hazard Assessment (OEHHA), the Department of Toxic Substances Control (DTSC), responsible persons, the community and the public. The regulations will establish and streamline the process for registration as an REA II; establish criteria, requirements and procedures for the processing of applications, renewal, denial, and rescission of registration, and appeal and auditing of the REA II program. These regulations will provide clarity, procedural guidance and consistency for applicants and OEHHA and are essential to the successful implementation of the REA II program.

GENERAL STATEMENT OF REASONS

Redevelopment and reuse of contaminated properties has been delayed by lack of government resources to provide oversight of the cleanup work for each of these sites. In some cases, site cleanup work was performed without regulatory oversight because government resources were concentrated on high risk sites which the private sector could not, or would not, address. The cleanup of lower risk sites by the private sector without the benefit of government oversight created a reluctance on the part of financial institutions to accept these properties as collateral on loans or redevelopment financing. Property owners found that despite using professional environmental cleanup companies, banks were unwilling to accept the property as clean without government oversight and certification.

In 1995, to address this problem, the Governor signed into law legislation authorizing the development of the REA II program. Through the REA II program, OEHHA will register private environmental professionals to evaluate sites and manage cleanup work for the parties legally responsible for cleaning them up. The proposed regulations are based on the requirements of Assembly Bill 1876, which repealed section 25570.3 and added sections 25570.3 and 25570.4, of the Health and Safety Code (H&SC). The new H&SC sections 25570.3 and 25570.4 authorize the expansion of the Registered Environmental Assessor Program at OEHHA to retain existing REAs as REA I and create a new class of registrants called REA II. Also known as "Private Site Managers," REA IIs are environmental professionals with specific expertise and experience in management and oversight of the investigation, assessment, remediation and certification of hazardous waste and hazardous substance release sites.

These proposed regulations are necessary for OEHHA to ensure that the intent of the legislation is achieved successfully and to fully implement a program for the registration and auditing of REA IIs.

DETAILED STATEMENT OF REASONS

Section 19030, Definitions: This section is amended to provide definitions, unless already defined in the Health and Safety Code, applicable to the chapter and to distinguish between REA I and REA II requirements. Amendments also place new and existing definitions in alphabetical order and distinguish between the mandates of the existing REA I and new REA II programs. This section defines the director of OEHHA to include a designee.

Section 19031, REA I Qualifications and Application Procedures: This section is amended by deleting the phrases "registered environmental assessor - Class I" and "Assessors - Class I" and replacing the phrases with the shorter title "REA I." This section is also amended to add the phrase "REA I" to distinguish between requirements of the REA I and REA II.

Subsection (h)(1), in compliance with section 411 of the Personal Responsibility and Work Reconciliation Act of 1996 denies REA I registration to illegal aliens.

Section 19032 REA I Registration, Renewal and Disqualification: This section is amended by deleting the phrases "registered environmental assessor - Class I" and "Assessors -

Class I” and replacing the phrases with the shorter title “REA I.”

Section 19033, REA II Criteria for Registration: This section provides the criteria by which applicants for registration as REA II will be assessed. Subsection (b), and (c)(1) duplicates the requirements of Health and Safety Code section 25570.3 (c), that the REA II applicant be registered as an REA I, and have graduated from a college or university with a degree in science, physical or biological science, engineering or a related field, have eight of the last ten years of professional level environmental experience and four of the last six years of professional level site mitigation experience.

Subsection (c)(2) establishes how OEHHA will determine if a college or university is accredited. Subsection(d) is a new subsection which sets forth the minimum experience requirements established in the Health and Safety Code section 25570.3 (c) and makes these requirements a criteria for registration as a REA II. In addition, this subsection defines thirty hours per week as the minimum number of hours which must be spent performing professional-level environmental and professional-level site mitigation work in order for that experience to be considered as qualifying minimum experience. This subsection allows part-time employees to determine how their experience for registration and renewal of registration will be considered.

Subsections (e) and (f) state the type of work experience which will be considered for “professional-level environmental experience” and “professional-level site mitigation experience” as required by Health and Safety Code section 15570.3(c):

Subsection (e)(1) states how OEHHA will determine if an applicant’s experience will be counted as professional-level environmental experience. Credit toward professional-level environmental experience will be given for work in which the applicant demonstrated sound scientific judgement, decision making, professional responsibility and integrity with minimal supervision.

Subsection (f) states how OEHHA will determine if an applicant’s experience will be considered to be professional-level site mitigation experience. Credit will be given for: 1) experience in which a majority of the applicant’s responsibilities included assessment, containment or removal actions; 2) evaluation and selection of scientific or technical methodologies; 3) the supervision of other professionals in conducting this work; and 4) scientifically supportable technical conclusions, recommendations and opinions.

Subsection (f)(2) requires at least four references including a favorable reference from a qualified representative of a lead agency with regulatory authority over cleanup work performed by the REA II applicant. Subsection (f)(3) requires that qualifying professional-level site mitigation experience be gained as a project manager and principal decision-maker.

Subsection (g) states that eligibility will be considered without regard to race, creed, color, gender religion or national origin. Subsection (h), in compliance with section 411 of the Personal Responsibility and Work Reconciliation Act of 1996, states that illegal aliens are not eligible for registration.

Section 19034, REA II Application for Registration: This section sets forth the requirements for completing and filing an REA II application. The applicant must submit a complete, legible application and the application fee. Subsection (b) and (c) authorize OEHHHA to request additional information in order to clarify an application or transcripts, if necessary. Subsection (d) requires OEHHHA to review an application for completeness and to notify the applicant, within 30 days of receipt, that the application has been accepted for review. If the application is deficient, the applicant will be notified of the deficiencies and what additional information is necessary. Subsection (e) sets forth the application and annual registration fees.

Section 19035, OEHHHA Review of Application: This section makes clear the procedure which OEHHHA will follow in review of an application for REA II which has met the criteria in section 19034. If an REA II applicant is not an REA I, the initial review will determine if the REA II applicant is eligible for REA I registration. If so, REA I registration will be granted. This review and registration is required by Health and Safety Code section 25570.3 (c).

Subsection (b) provides the information which OEHHHA will review in determining if an applicant's experience and education qualify that applicant for registration as a REA II. This information includes: 1) the knowledge, skill, and expertise of the applicant, the applicant's relevant employment, previous performance, number and disciplines of professionals supervised, scientific defensibility of conclusions, recommendations and opinions of the applicant and the independence of the applicant's decision-making responsibilities. OEHHHA will determine if registration is denied or accepted within 120 days of receipt of a complete application. OEHHHA will review references, reports, comments, affidavits, and any other sources necessary to determine the qualification for registration, of the REA II applicant.

Section 19036, REA II Denial of Registration: The section sets forth the circumstances under which OEHHHA will deny registration of a REA II applicant: 1) failure to meet the minimum criteria set forth in section 19033, Criteria for Registration; 2) grounds stated in the Business and Professions Code, Division 1.5, sections 475 through 478 and sections 480 through 489; and, 3) any of the findings listed in Health and Safety Code section 25570.3(l). Health and Safety Code section 15570.3(l) lists findings which are sufficient grounds for rescission of a registration. Subsection (b)(2) makes these findings grounds for denial of registration as well.

Subsection (c) makes it clear that OEHHHA, will consider an applicant's eligibility for registration and rehabilitation when considering registration denial on the grounds stated in the Health and Safety or Business and Professions Codes.

Subsection (d) gives the director of OEHHHA final authority in denial decisions.

Subsection (e) makes it clear that if registration is denied based upon a crime, the crime must be substantially related to the qualifications, functions and duties of a REA II. Crimes include violations of Chapter 12.5 of Division 3 of the Business and Professions Code and crimes involving an act of moral turpitude. Health and Safety Code 25570.3(l) Subsection (f) refers the applicant to section 19039, which sets forth the procedures for appeal of the denial of registration and establishes a 60-day time frame for appeal.

Section 19037, REA II Renewal of Registration: This section makes it clear that REA II registration must be renewed within five years of the anniversary date of initial or renewed registration. Subsection (b) lists failures or deficiencies for which OEHHHA will deny registration renewal: 1) failure to meet the criteria for registration in section 19033; 2) failure to meet the continuing education requirements; 3) OEHHHA's receipt of factual complaints which warrant denying renewal of registration; or any of the grounds listed in section 19036, Denial of Registration.

Subsection (c) makes clear the requirements for earning continuing education credit and requires a minimum of 30 units of continuing education credit for registration renewal. Continuing education may be earned through attending or instructing classes, seminars, symposiums or workshops pertaining to the investigation and remediation of hazardous substances and hazardous wastes. A log showing the type, sponsor, location, duration, instructor or speaker's name and attendance certificate must be submitted with application renewal. Continuing education credit will be converted at a rate of two hours of classroom time equal to one continuing education unit. The REA II applicant is required to swear and affirm that all continuing education information is true. Subsection (c) gives OEHHHA the authority to require that all REA IIs take a specific course.

Section 19038, REA II Rescission of Registration: This section sets forth the conditions under which OEHHHA will rescind the registration of a REA II. Subsection (a) makes clear that registration will be rescinded for the grounds listed in section 490 through 495 of the Business and Professions Code, or for failure to meet the performance standards adopted pursuant to Health and Safety Code section 25395.15.

Subsection (b) makes clear that the Director may temporarily or permanently rescind the registration of a REA II, or take other disciplinary action for any of the grounds listed as grounds for registration denial in section 19036. The Director may also temporarily or permanently rescind or take other disciplinary action if an REA II does not remain independent of the project proponent, responsible parties or prospective buyers of the property. "Independent" is defined in section 25395.1(d) of the Health and Safety Code and this section. Action may also be taken for an REA II's failure to comply with Health and Safety Code sections 25570.3, 25570.4, 25395.1 through 25395.15, and regulations adopted pursuant to Health and Safety these sections.

Section 19039, REA II Appeal Procedures: This section makes clear the process for the appeal of decisions made under section 19036, 19037, and 19038. An appeal must be filed in writing, including supporting material, within sixty days after the date of the denial or rescission notice. The Director may deny any appeal which is not received within 60 days. The Director will notify, in writing, approval or denial of an appeal within 120 days of receipt of an appeal. If an appeal is denied, the Director will notify the applicant of the right to a hearing under the Administrative Procedures Act, Government Code section 11500 through 11530. The applicant must make a written request for such hearing within sixty days of receiving the notice of denial.

Section 19040, REA II Disciplinary Guidelines: This section makes clear and adopts by reference, the disciplinary guidelines to be used by OEHHHA in reaching a decision on a disciplinary action. This section allows OEHHHA to deviate from those guidelines if OEHHHA

determines that the facts of a particular case warrant deviation from the guidelines.

Section 19041, REA II Audits: Health and Safety Code section 25570.3(k) provides the director of OEHHA with the authority to perform audits of REA IIs, as necessary to ensure the desired standard of performance. Subsection 19041(a) makes clear that the standard of performance which will be audited by OEHHA is beyond the standard of performance to be included in regulations adopted pursuant to Health and Safety Code section 25359.15. If, as the result of an audit, OEHHA finds deficiencies in the work of the REA II which are troublesome, but do not fall below the minimum standard of performance, OEHHA will report these deficiencies to the REA II and the lead agency.

Subsection 19041(b) makes clear that OEHHA will be auditing to review the qualifications, quality of work (including the exercise of reasonable care and diligence), and to ensure the desired standard of performance and professional responsibility. Subsection (c) makes clear that OEHHA will investigate complaints regarding the work of the REA II and will conduct, or arrange for the conduct of investigations as necessary to respond to allegations and complaints. Subsection (d) makes clear that in responding to a complaint, OEHHA may request an informal conference. Subsection (e) duplicates the language in Health and Safety Code section 25570.3(k) regarding OEHHA's access to information, data, and other materials related to the work of the REA II.

Section 19042, REA II Reasonable Care and Diligence: This section makes clear and provides guidance to the REA II regarding the standard to which OEHHA will conduct audits of the work of an REA II. Subsection 19041(b) states that the goal of OEHHA's audits will be to verify the quality of work of the REA II, including the exercise of reasonable care and diligence. This section makes clear that the exercise of reasonable care and diligence includes: 1) compliance with applicable laws and regulations; 2) in conducting a Preliminary Endangerment Assessment, documentation of whether hazardous substance or hazardous waste management practices resulted in a release of hazardous wastes or hazardous substances and whether that release or threat of release poses a threat to public health and the environment; 3) a survey of the community to determine if there is significant community interest or controversy over the site; 4) a Remedial Investigation and Feasibility Study which fully characterizes the nature and extent of risks posed by hazardous substances or wastes at a site, and describes the risk may be mitigated; and 5) a Remedial Design and Remedial Action which meets the remedial objectives for the site.

Subsection (b) requires reports to be submitted with the signature and registration number of the REA II and the signature and registration number of each registered professional performing geologic, engineering or other professional services which are included in, or form the basis for the report. All engineering and geologic work must be performed in compliance with the Professional Engineers Act or the Geologist and Geophysicist Act.

Section 19043, REA II Professional Responsibility: This section makes clear the standard of performance and professional responsibility which OEHHA audits will address. The criteria by which the REA II will be audited includes:

1) protection of public health and the environment; 2) exercise of independent professional judgement and objectivity; 3) efforts to obtain relevant data, material or other information

regarding conditions at the site; 4) evaluation, development and selection of sound technical methodologies or conclusions; 5) understanding and compliance with applicable laws, regulations and guidance; 6) if the REA II has managed, supervised or actually performed the work required to form the remedial opinion; and 7) if the REA II has explained and disclosed how the remedial action recommendation was arrived at.

Subsection 19043(b) requires the REA II to make certain notifications after identifying an imminent hazard, substantial endangerment, or new information not known by a previous site assessor. Subsection (c) requires lead agencies to report substandard REA II work to OEHHA. Subsection (d) requires the REA II to fill out program evaluation questionnaires to assist in improvements to the REA II program. Subsection (e) and (f) state that a REA II's registration will be rescinded by OEHHA for failure to meet the minimum performance standards adopted pursuant to Health and Safety Code section 25395.15 and, as the result of an audit, failure to meet the requirements of this section.

Section 19044, State Licensing Match System: In accordance with the requirements of the Welfare and Institutions Code section 11350.6, this section makes clear that OEHHA will take action including rescission, denial of renewal, issuance of a temporary registration, or other authorized action against REA IIs or REA II applicants not in compliance with a support order or judgement.